91

HIGH COURT OF JUDICATURE CHHATTISGARH : BILASPUR
DIVISION BENCH

CORAM : HON'BLE SHRI H.L. DATTU, CJ &
HON'BLE SHRI V.K. SHRIVASTAVA, J.

WRIT PETITION NO.1220 OF 2002

PETITIONER

Jai Kishan Sharma, S/o Late Ram Narayan Sharma, aged about 74 years, Resident of Rajapara Kanker, District Kanker (CG).

Versus

RESPONDENTS

1. The State of Chhattisgarh, through the Secretary, Department of Revenue, Mantralaya, D.K.S. Building, Raipur.
2. The Collector, Kanker, District Kanker (CG).
3. The Municipal Council, Kanker, through the Chief Municipal Officer, Kanker.
4. Prabhari Adhikari, Nazul, Kanker, District Kanker (CG).
5. Dhyanchand Thekedar.
6. Shri Rao Thekedar.
7. Prabhu Dan Jain Thekedar.

   Respondents No.5 to 7 resident of Kanker, through the Chief Municipal Officer, Municipal Council, Kanker, District Kanker (CG).

Present : Smt. Indira Tripathi, counsel for the petitioner.

Shri Vinay Harit, Dy. Advocate General for the State/ respondents No.1, 2 and 4.

Shri Sanjay K. Agrawal, counsel for respondent No.3.

92

ORAL ORDER
(Passed on 16th March, 2007)

The following oral order of the Court was passed by **H.L. Dattu, CJ.**

Petitioner claims himself to be a public-spirited citizen. He wants to protect the interest of the public at large and the people living in the surrounding areas of Gajbandha Talab situated in Kanker city. According to the petitioner the said Talab is situated in khasra No.18D and it extends to an area of 47845 sq. mts. His grievance in this writ petition is that the third respondent Municipal Council instead of protecting the interest of the public, has thought it fit to fill the Talab with mud and construct shopping complex and also a bus stand. According to the petitioner, the construction of the shopping complex and the bus stand would affect the life style of the petitioner and others, who are living in the surrounding areas of the Talab.

2) This Court had entertained the writ petition by issuing notices to the respondents.

3) Petitioner in fact had made an application before this Court inter alia requesting this Court to grant ad-interim stay, staying all further proceedings pursuant to the resolution passed by the Municipal Council and also public notice issued by it expressing its intention to construct the shopping complex on the Talab.

4) This Court by its order dated 16-4-2003 has specifically rejected the request for interim prayer. While doing so the Court has observed as under :

> "Shri Sanjay K. Agrawal submitted that respondent No.3 has invested Rs.50,73,556/- and the construction has come up to roof level

93

and the plaster is going on. He also submitted that the Central Government has sanctioned Rs.44,00,000/- for the purpose of constructing shopping complex and for the purpose of Bus Stand, the State Government has sanctioned Rs.30,00,000/-.

Having considered the facts and circumstances of the case and material on record and in view of the decision of the Hon'ble Apex Court in the case of Malik Brothers –v- Narendra Dadhich and others reported in 2000 (1) JLJ 36, in the opinion of this Court this is not a fit case for granting the interim order, as prayed for by the counsel for the petitioner in the petition. Accordingly, it is rejected."

5) Petitioner has accepted this interim order. For the reason best known to the petitioner, he had not questioned the correctness or otherwise of the order of this Court before any superior forum.

6) After rejection of the request for interim order, we are told by the learned counsel for respondent No.3 Shri Sanjay K. Agrawal, that the respondent Municipality has completed the construction and thereafter has allotted the shops in the shopping complex by way of public auction. He also informs us that the bus stand has been completed and it is being made use of by the transport authorities.

7) In the normal course we would have definitely said that the Municipal Council should not have accorded permission for constructing shopping complex and bus stand etc. on ponds, river edges etc. We would have said so because the pond would enhance the water belt and the people will be in a better position to make use of the water for the purpose of drinking and for other purposes. Apart from this, pond would definitely enhance ecology of the place. But, in the present case, this Court has rejected the interim prayer sought for by the petitioner and thereafter the respondents were allowed to complete the construction and after such construction, the shops in

(94)

the shopping complex have also been auctioned. Third party rights have now been created. At this stage, we cannot turn the clock back and then direct the Municipal Council to demolish the shopping complex that is constructed on the Talab. In this view of the matter, though we have the inclination to sustain the prayer of the petitioner, but in view of the further proceedings that have taken place after 16-4-2003, the relief sought for by the petitioner cannot be granted by us at this stage. Accordingly, appreciating the stand of the petitioner, the petition requires to be rejected and accordingly it is rejected. Ordered accordingly.

Sd/-
Vijay Kumar Shrivastava
Judge

Sd/-
Chief Justice